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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,698	11/05/2003	Ricardo Blank	8496-US	7089
74476 7590 08/14/2009 Nestle HealthCare Nutrition 12 Vreeland Road, 2nd Floor, Box 697 Florham Park, NJ 07932				
EXAMINER MAR CETICH, ADAM M				
ART UNIT		PAPER NUMBER		
3761				
NOTIFICATION DATE		DELIVERY MODE		
08/14/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/701,698	Applicant(s) BLANK ET AL.
Examiner Adam Marcetich	Art Unit 3761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 2, 3, 7, 8, 10-24 and 27-36.
Claim(s) withdrawn from consideration: 25 and 26.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Leslie Deak/
Primary Examiner, AU 3761

/Adam Marcetich/
Examiner, Art Unit 3761

Continuation of 3. NOTE: The amended claims filed 03 August 2009 are not being entered since they would require further search and consideration. Claims 2, 7 and 30 have been amended to include the limitations of:

[2, 7] "the tube part comprising a first venting means for venting an interior of the laminated paper packaging system" and [30] a first rim means "comprising a rigid material" and a second rim means "comprising a flexible material" more distal thereon;

Claims 2 and 7 are amended to include a limitation from dependent claim 10, and therefore change the scope of the claims. Examiner had not considered these limitations in the original search. For example, the independent were interpreted more broadly to not require a first venting means. Claim 30 is amended to specify the relative rigid and flexible materials of a first and second rim means. Examiner had not considered these limitations originally. In other words, the materials of both first and second rims were interpreted broadly, and not considered based on their relative flexibility or hardness. Therefore, these proposed amendments would require additional resources on behalf of the Examiner and are therefore not being entered.

Continuation of 11. does NOT place the application in condition for allowance because:

RESPONSE TO ARGUMENTS

Applicant's arguments filed 03 August 2009 have been fully considered but they are not persuasive.

Applicant asserts that Kawaguchi and Rule fail to disclose or suggest a first venting means for venting an interior of the laminated paper packaging system as required by amended claims 2 and 7. Applicant proposes an amendment to independent Claim 30 to require a first rim means comprising a rigid material and a second rim means comprising a flexible material. Applicant contends that that Kawaguchi and Rule also lack these limitations. Examiner notes that the limitations of claims 2, 7 and 30 have not been entered, since it would change the scope of the claims as discussed above.

Applicant submits that Evans fails to remedy the deficiencies of Kawaguchi and Rule, namely a first venting means.

Applicant notes that both Kawaguchi discloses an elongated pipe adapter completely enclosed by a tube, that Rule discloses top and bottom portions completely enclosed by a teat and a container, and reasons that the tubing or teat of Kawaguchi or Rule would completely cover the vent of Rule. Applicant also requests that the Examiner clarify the rejection of Kawaguchi and Rule in view of Evans.

Examiner notes that Evans also discloses a tube completely enclosed by a container and tube, namely fluid outlet passageway 36. To vent air, Evans places another lumen with one end inside a container and the other outside (Fig. 2, air inlet 38). Adding a second lumen to the dispenser of Kawaguchi does not destroy its function, and allows for all contents to be dispensed. Additionally, this modification inverts the outlet member 18 of Evans, to face air inlet 38 towards a container and filter 58 away from a container. Kawaguchi calls for a venting means, since Kawaguchi suggests a need to entirely dispense the contents of a container ([0014], discharge opening or groove for discharging residual liquid, to avoid wasting contents).

Applicant submits that Ninomiya fails to remedy the deficiencies of Kawaguchi and Rule, namely a cutting member as claimed [claim 20]. Applicant notes that Ninomiya discloses that only saw tooth blade 12a ruptures a container surface, and that most of the tubular body 1 and lid 2 do not enter the container. Applicant reasons that a skilled artisan would not shorten the bottom pointed end of the elongated pipe adapter body in Kawaguchi or the bottom spike of the tubular teat mounting of Rule in view of Ninomiya, because to do so would render the devices of Kawaguchi and Rule inoperable. Examiner notes that Ninomiya does not render the combination inoperable since each of Kawaguchi and Rule require only that a tube extend into a container far enough to withdraw liquid. That is, a tube that extends a shorter distance into a container does not prevent liquid from being dispensed. Additionally, Kawaguchi suggests that a shorter tube may be preferable, since a longer tube requires an opening or groove for discharging residual liquid ([0014]).

Applicant submits that Quinn, Schafer and Broman fail to remedy the deficiencies of Kawaguchi and Rule. To clarify, Examiner cites:

*** Quinn as teaching a visualization tube and second venting means;

*** Schafer as teaching a pump unit or dosing means; and

*** Broman as teaching an intermediate bag.